IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 18392 OF 2005

Date: 24.10.2005

BETWEEN:

The Water Users Association, Peddacheruvu,

Edulapusapally Gram Panchayat, Mahabubabad Mandal

Warangal District, rep. by its President/Chairman

Sri Garlapati Sudarshan Reddy

.... PETITIONER

And

1. The Government of Andhra Pradesh, I & CAD (P.W.S.R.S.P-I) Department, rep. by its Secretary, Secretariat Buildings, Hyderabad, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 18392 OF 2005

ORDER:

Water Users Association, Peddacheruvu, Edulapusapally Gram Panchayat (hereinafter called 'the Association') is the petitioner. The present writ petition is filed seeking invalidation of the orders of the first respondent in G.O.Rt.No.730 dated 23.9.2002. By the impugned G.O., the Government accorded permission for withdrawal of water from Edulapusapally Minor Irrigation Tank, Warangal for drinking purposes of Mahabubabad town in Warangal District.

The petitioner Association was formed in 1997 under the provisions of Andhra Pradesh Farmers Management of Irrigation Systems Act, 1997 (for short 'the Act'). It has 1800 members, and catering to the needs of the members by supplying water for irrigation from Edulapusapally Irrigation Tank with an ayacut of Acs.1200.00 to Acs.1500.00. According to the petitioner, the water spread area of the tank is Acs.158.00 and about 900 farmers are depending on the water supplies for their irrigation, which is supplied through three sluice gates.

The petitioner further alleges that at present Munneru Vagu (rivulet), which is receiving water from about 25 to 30 tanks including Pakala Major Irrigation Tank, is also supplying drinking water to the inhabitants of Mahabubabad Mandal and Town. The total length of Munneru rivulet is about 35 kms., and by reason of construction of a check dam, the water is being stored up to the length of 3 kms., and is being taken through a pipeline, through Mahabubabad town. There are five tanks, namely, Janala Tank, Nizam Tank, Rabadra Tank, Kambhala Tank and Talapusalapally Tank situated adjacent to Mahabubabad town and the Government already laid a pipeline from Munneru rivulet to Janala Tank by spending a sum of Rs.40,00,000/- to provide drinking water to the residents of Mahabubabad. Therefore, according to the petitioner there is no further need to draw water from Edulapusapally Tank. The petitioner alleges that respondents 2 to 4 made proposals for the purpose of laying pipeline for pumping drinking water into Edulapusapally Tank to supply to residents of Mahabubabad town and started digging operations from Munneru rivulet. The Managing Committee of the petitioner Association approached the Deputy Executive Engineer, irrigation for redressal, in vain. The petitioners therefore, allege that the action of the first respondent in approving the scheme to draw water from Edulapusapally Tank is contrary to the Act, and being illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

The fifth respondent herein filed counter affidavit on behalf of the respondents. Respondent No.7 also filed additional counter affidavit. The averments of these two counter affidavits filed on behalf of the respondents may be summed up. Edulapusapally Tank is a Minor Irrigation Tank with an ayacut of Acs.877.00. The five tanks referred to by the petitioner Association are small kuntas with inadequate storage capacity and the water from them cannot be utilized for drinking, as there is possibility of contamination with drainage/sullage water. The pipeline provided from Munneru rivulet to Janala tank in 2003 will provide drinking water for three months i.e., from December to January because of small storage capacity. There is no other alternative except to draw water from Edulapusapally tank for supplying drinking water to Mahabubabad town, where owning to scanty rainfall, there is scarcity of drinking water. The said problem was discussed in review meeting on 23.4.2000 under the Chairmanship of Minister for Social Welfare, District Collector, Warangal District and Akhilapaksha Committee representatives. In the said meeting, the office bearers of the petitioner Association were also present. As per the decision taken in the review meeting, it was proposed to take up comprehensive protected water supply scheme under NABARD programme, by reverse pumping water from Munneru rivulet to Edulapusapally Tank and then supplying water to Mahabubabad town from Edulapusapally Tank. Accordingly, a proposal was submitted by the Chief Engineer, which was approved, and the first respondent accorded sanction in the impugned G.O.

In the additional counter affidavit filed by the seventh respondent denying the allegation that a pipeline is being laid from Edulapusapally tank, it is further stated that the scheme was designed to draw water from Munneru rivulet for 240 days and for the balance of 120 days from Edulapusapally tank to an extent of 18 Mcft. (Million Cubic Feet). It is proposed to draw water from SRSP canal, fill up Edulapusapally tank and then to draw 18 MC. Ft. without in any manner depleting the water capacity available for irrigation under Edulapusapally tank. There is no increase or decrease in the existing irrigation system and by reason of storage in the tank it would be more beneficial for the farmers, as the ground

water level would improve.

The learned counsel for the petitioner Sri P. Kesava Rao made elaborate submissions. He placed reliance on Sections 13, 16, 17 and 23 of the Act in support of the contention that after formation of Water Users Association it is only the association, which can manage available water sources either for the purpose of irrigation or drinking water. The Government has no power or authority to convert an irrigation tank into drinking water storage tank. Secondly, he vehemently contends that in 2003 Government already laid pipeline from Munneru rivulet to Janala tank by spending a sum of Rs.40,00,000/-, and therefore, there is no necessity again to lay pipeline from Munneru rivulet to Edulapusapally tank.

The learned Assistant Government Pleader for Panchayat Raj submits that the writ petition is not maintainable as the questions raised are not justiciable. He placed reliance on the decisions of this Court in **K. Narasimhulu v. The District Collector, Cuddapah, Pennar Delta Ayacutdars Association v. Government of Andhra Pradesh** and **Perali Water Users Association v. Government of Andhra Pradesh**. He nextly contends that before taking up the scheme, the officials have discussed with the Ayacutdars of the petitioner Association in the review meeting held in April 2000, and therefore, the petitioner Association cannot have any objection. He also submits that the petitioner Association cannot have any grievance, as the Government is using the Edulapusapally tank only as intermediate storage tank for the purpose of supplying drinking water to Mahabubabad town.

The petitioner Association, constituted under the provisions of the Act, cannot be said to have exclusive rights over the utility of the irrigation tank. The limited right that is conferred by the Act is the management of the available irrigation ayacut under an irrigation tank by proper and equitable distribution of water available for irrigation. The State is the paramount owner of all sources of irrigation, including rivers, irrigation tanks and ground water resources. No citizen or an Association of citizens can claim such an absolute right so as to prevent the State from utilizing the available water resources in irrigation tank or putting the irrigation tank to a different use than for the purpose of irrigation. No citizen or an association of citizens can prevent a State from discharging the constitutional duty of ensuring adequate drinking water supply to the people. Right to life under Article 21 of the Constitution of India also includes right to adequate drinking water, and if the State within its resources fails to supply drinking water to citizens of municipality or any panchayat or any village, the same would violate Article 21 of the Constitution of India. Therefore, it is not possible to accept the submission of the learned counsel for the petitioner that the State has no power to convert an irrigation tank into a source of drinking water supply. There is no such provision in the Act, which injuncts the State from doing so or from restraining the State to utilize an irrigation tank partly for irrigation and partly for drinking water purposes. Further, according to Section 3 of the Act it is for the District Collector to delineate command area under each of the irrigation systems on a hydraulic basis and also prescribe the area of operation to each water users association. The power of the District Collector to do so also includes the power to exclude any command area or any irrigation system from the area of operation of a given water users association. Therefore, the petitioner Association cannot claim any absolute right.

It is well settled that the extent and scope of judicial review depends on the subject matter brought before it. It is inherent limitation of power of this Court under Article 226 that all matters are not justiciable. Wherever, the subject mater lacks adjudicative disposition such an issue is not justiciable and the writ petition would not lie. In **Pennar Delta Ayacutdars Association** (supra), a Division Bench of this Court considered the question whether the decision of the Government not to supply water to ayacutdars under Somasila Project came up for consideration. This Court after referring to the relevant principles of judicial review, laid down as under.

> In India, the position is the same. It is well settled that when taking a decision an administrator, depends on evaluation of facts, and applies the law to the facts. The decision-maker's choice and the finding recorded by such authority shall be treated as final unless it is grossly perverse and irrational. Further, the Courts in India have held that after appreciation of the facts, if there is a second view possible as per the Courts consideration, still the Courts cannot interfere with the decision on the ground that the conclusion reached by the decision-maker is not correct 'in the eyes of the Court'. Even if there are two views possible, the decision-maker's finding on facts is treated as conclusive.

Yet again it was held –

> Therefore, in an action like the one before us, unless the petitioners plead and prove that deprivation of right to water, for the purpose of irrigation is unreasonable, no action would lie. We must hasten to add that the dispute is not of justiciable nature to be adjudicated by this Court. Our endeavor, as a Court of judicial review, has been to satisfy the Court's conscience that there is no arbitrariness in the decision making process especially when the petitioners complain the deprivation of their right to equality under Article 14 and right to life and liberty under Article 21 of the Constitution. Needless to add, that right to water, which is substantial ingredient to make 'life', is itself a penumbral right to life.

I n **Perali Water Users Association** (supra) this Court again considered the question whether the decision of the Government not to release water to the members of Perali Water Users Association under Krishna Western Delta System under Nagarjunasagar Project is justiciable. After referring to **Pennar Delta Ayacutdars Association** (supra) and other decisions of the Supreme Court, this Court observed as under.

> Narmada Bacho Andolan v. Union of India, [(2000) 10 SCC 664], the Supreme Court was dealing with the challenge wherein the petitioners raised before the Court the issues of environmental clearance in relation to Sardar Sarovar Dam, the controversy regarding the height of the dam and extent of submergence, hydrology, seismicity etc. In the beginning of the judgment itself, the Supreme Court categorically ruled that except implementation of relief and rehabilitation, all other issues cannot be permitted to be raised and that the concern of the Court is protection of fundamental rights of the land oustees under Article 21 of the Constitution of India. The Court also observed that in a situation where conflicting rights had to be considered – some people supporting construction of dam as a panacea for all the problems of the area, some people opposing on the ground of adverse

effects – the State has to take decision keeping in view the background of such conflicting issues. When a decision is taken by the Government after due consideration and full application of mind, the Court cannot sit in appeal over such decision. It was further held.

> It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are a part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

In this case, there are no standards to try the issue of release or non-release of water from the irrigation system and hence the issue is non-justiciable.

The issues raised in this writ petition are essentially prerogative powers of the executive in managing available water resources for the purpose of drinking and for the purpose of irrigation. The executive is presumed to know the competing issues and therefore it is also presumed that they have weighed all factors and took a decision in the best interest of all the people. Such issues lack adjudicative disposition and are not justiciable.

In the result for the above reasons, the Writ Petition fails and the same is accordingly dismissed at the admission stage.

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(**V.V.S. RAO, J.)**

24th October, 2005

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